



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAY 13 1981

OFFICE OF ENFORCEMENT

MEMORANDUM

SUBJECT: Regional Office Criteria for Neutral Inspections of  
Stationary Sources---Amended Guidance

FROM: Director  
Division of Stationary Source Enforcement

TO: Enforcement Division Directors  
Regions I-X  
Surveillance & Analysis Division Directors  
Regions I-X  
Air & Hazardous Materials Division Director  
Region II

FEB 25 1998

ECDC

We have reviewed the neutral inspection schemes voluntarily submitted to us by several Regional Offices in response to the general guidance we issued on October 29, 1980. While the Regional criteria we have examined so far seem to track that general guidance, there are some problems remaining in these Regional schemes. This memorandum is intended to isolate and clarify these problems, as well as to make some amendments to the general guidance as suggested by some of the Regional drafts.

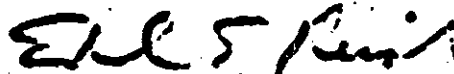
The purpose of having a neutral inspection scheme on file in each Regional Office is to enable the Agency to justify to a court a request for a warrant to conduct a compliance inspection in the absence of evidence that a particular source is violating the Clean Air Act. This type of inspection is usually conducted as part of each Region's annual Overview Inspection Program, but might also be applicable to routine inspections of NESHAPS sources, NSPS sources, and any other sources for which the Agency has primary enforcement responsibility (e.g., PSD sources or sources subject to New Source Review, where such programs have not been delegated to the States) and which must be inspected annually.

One of the questions raised by our general guidance was the characterization of the criteria for selection of sources to be inspected. Several factors were listed as Optional Criteria. By this description, we did not mean to infer that these factors could be ignored in the selection process. Rather, we intended that a source to be inspected must meet not only the criteria labeled Mandatory, but also at least one of those termed Optional. To take the selection process through only the Mandatory Criteria would leave too much latitude in source selection in violation of principles enunciated by the Supreme Court in the 1978 Barlow's Decision. We are therefore amending the general guidance to

relabel the selection criteria as Primary and Secondary, with both sets of criteria to be applied to each source chosen for inspection. Every source inspected must meet the Primary Criteria and at least one of the Secondary Criteria. Authorization for inspection of NESHAPS sources, which had been set forth separately, is now subsumed in this characterization. At the suggestion of Regional staff, we have also expanded the list of Secondary Criteria. Additionally, in order to account for the presence of fugitive emissions, we have amended Secondary Criteria #7 to include sources with process equipment requiring particularly good operation and maintenance procedures in order to maintain compliance.

It should be remembered that the purpose of a written neutral inspection scheme is to provide authorization for routine compliance inspections. Any source not covered in the scheme cannot be inspected, absent suspicion of a violation of the Clean Air Act. Therefore, an additional problem in some of the Regional drafts is the utilization of source categories to select sources for inspection. The drawback in this system is that a Region might wish to inspect a source long overdue for a routine inspection but be unable to do so because the source is in a category not covered by the neutral inspection scheme. There is also the possibility that categorization will exclude various significant lead, NSPS, or NESHAPS sources.

Please review your neutral inspection schemes once again to see if they fit within the attached amended general guidance. Feel free to call Mark Silvermintz of my staff at FTS 755-2570 if you have any questions.



Edward E. Reich

Attachment

cc: Richard D. Wilson  
Acting Assistant Administrator  
for Enforcement

David E. Menotti  
Associate General Counsel  
for Air, Noise, and Radiation

**CRITERIA FOR SELECTION OF STATIONARY SOURCES  
FOR ROUTINE COMPLIANCE INSPECTIONS**

- I. Sources subject to State Implementation Plans (including provisions approved or promulgated under 40 CFR §51.18 and Parts C and D of Title I of the Clean Air Act), or §111 of the Act (NSPS) or §112 of the Act (NESHAPS).**

**A. Primary Criteria**

- 1. In selecting a stationary source for a compliance inspection, the source should be one which:**

- a. Emits an air pollutant subject to the Clean Air Act and the regulations promulgated thereunder, and for which:**

- 1. The actual emissions or potential emissions while operating at design capacity with pollution controls are equal to or exceed 100 tons per year of the regulated air pollutant (Class A1 sources), or**

- 2. The uncontrolled emissions while operating at design capacity are equal to or exceed 100 tons per year of the regulated air pollutant (Class A2 sources); or**

- b. Emits less than 100 tons per year of a regulated air pollutant in the absence of pollution controls (Class B sources) and which may contribute to nonattainment of an ambient air quality standard for that pollutant; or**

- c. Emits lead; or**

- d. Is subject to a NSPS or NESHAPS.**

- 2. The source should also be one which:**

- a. Was reported within the preceding year by a State or local agency as being in compliance with applicable emission limits; or**

- b. Was either not inspected by a State or local agency or by EPA during the preceding year, or was subject to an inconclusive inspection during the preceding year.**

**B. Secondary Criteria**

The following criteria (at least one) should be used in selecting facilities for inspection from among those which meet the Primary Criteria (and may be used by each Regional Office in any order it chooses, and in a manner best suited to its resources, workload, manpower, and area of geographic responsibility):

1. Source emits a criteria pollutant and is located in a nonattainment area for that pollutant, or in an area unclassified for such pollutant;
2. Source has a significant impact upon local ambient air quality or emits a hazardous air pollutant;
3. Source is located in an urban area where there is greatest exposure of population;
4. Source has a history of violations and now is reported as in compliance;
5. Source has had frequent changes in compliance status;
6. Source has undergone process changes subsequent to its most recent inspection or has commenced initial operation;
7. Source requires particularly good operation and maintenance of pollution control or process equipment in order to maintain compliance;
8. Source is located near other sources which have been scheduled for inspection at approximately the same time in accordance with this Criteria for Selection of Stationary Sources for Routine Compliance Inspections or under probable cause to believe the source is in violation of the Clean Air Act;
9. Source was subject to a prior compliance test, inspection or information request which produced inconclusive data concerning its compliance status.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

DEC 2 1977

OFFICE OF ENFORCEMENT

MEMORANDUM

**SUBJECT:** Guidance for Section 114(d) of the CAA

**FROM:** Director, Division of Stationary Source Enforcement

**TO:** Enforcement Division Directors, Regions I-X  
Surveillance and Analysis Division Directors,  
Regions I-X  
Air and Hazardous Materials Division Directors,  
Regions I, III-X  
Facilities Technology Division Director, Region II

Attached is the final guidance package on Section 114(d) of the CAA. This guidance incorporates comments solicited by DSSE in my September 9 memorandum. It should be remembered that this guideline only covers the provision for notifying the States pursuant to the requirement. Even though most regions are currently practicing some form of this guideline, it should be implemented immediately.

Guidance on suspension of such notification should EPA believe that the State agency is informing the subject facilities is forthcoming. Any occurrences of this nature should be brought to the attention of the DSSE technical advisor for your region.

Attached under separate cover are the regional comments on the interim guidance and DSSE's response. I would like to thank all those participating for their comments.

A handwritten signature, likely of Edward E. Reich, is written above the name.

Edward E. Reich

cc: Richard Wilson  
Walt Barber  
Richard Rhoads  
Donald Goodwin

FEB 25 1978  
EC.D.C.

Guidance on the Use of Section 114(d):  
Notice to the State in Case of Certain Inspections.

Introduction

The purpose of this guideline is to provide general policy on implementing the requirements of Sec. 114(d) for enforcement purposes. This guideline only covers the provisions of notification to the State agency of an EPA entry, inspection or monitoring. Future guidance will be provided for suspension of this notice should EPA believe that the State agency is informing subject facilities.

This guideline should be used in conjunction with S.12 "General Policy on the Use of Section 114 Authority for Enforcement Purposes".

Requirements of §114(d)

New subsection 114(d) adds an additional requirement to the process of carrying out Section 114(a)(2) of the CAA. Section 114(a)(2) establishes right of entry for certain purposes and the right of the Administrator to sample emissions. Section 114(d) provides that the Administrator (or his representatives\*) shall provide the State air pollution control agency with "reasonable prior notice" before carrying out Section 114(a)(2). It also requires EPA to indicate the purpose of the activity.

Implementation

The Regional office should first establish contact with the directors of State agencies to formulate a mutually agreed upon procedure for implementation of this new requirement. This procedure should include:

- Name of person(s) to be notified
- Means of notification (telephone or written)
- Lead time prior to any EPA field investigation  
(reasonable prior notice)
- Policy of notifying the state of unscheduled inspections
- Extent of the stated purpose of the visit

\*The term "representatives" includes specific regional office and headquarters personnel and contractors with credentials under EPA contract.

In establishing these procedures with the State agencies it is suggested that the following guidance be implemented.

Reasonable prior notice is interpreted as an official notification to the State agency that EPA is planning to conduct a surveillance action at a source and the purpose of that activity. It is recommended that all notifications be made within the 30 day period prior to the field activity; with 48 hours being the minimum notification period under normal circumstances. This is to provide sufficient travel time for EPA personnel and State personnel should the state choose to attend. An exception to the 48 hour notice would be a Section 303 situation where an emergency requires immediate attention. In such cases, the State agency should immediately be informed by phone that an action is needed.

In cases where the region practices the policy of notifying states of inspections 2-3 months in advance with a request that they be contacted if state personnel wish to accompany them, a confirmation of only those state accompanied inspections should be made. A phone call a few days before the inspection is sufficient. An effort should also be made to minimize changes in this advanced notification schedule.

The means of notifying the States can be in the form of written or oral communication. A record of all written or oral notifications should be kept. This should include a record of unscheduled inspections and Section 303 actions. The record of the written or oral notification should consist of:

- (1) name and location of subject facility
- (2) date and approximate time of the activity
- (3) Regional office contact (phone number, etc.)
- (4) reason for the visit
- (5) name of State person contacted
- (6) date and time of notification

Each office should have a central file containing records of all notifications should a request for a list of all notifications be made. It is not necessary for the State to approve the inspection before EPA proceeds.

As stated in the amendments, all sources covered by an approved SIP or those under a State 113(d) order are subject to these requirements. Surveillance of those sources that are subject to EPA promulgated regulations do not require advance notice by EPA. In reality, few sources will fall into this latter category. If the region adheres to EPA policy, all emission points at a source should be inspected. In doing so it is likely that certain points will be subject to SIP regulations; therefore, subject to the notification requirements. It is recommended that States be notified of all EPA field actions, including those concerning non-state

regulations unless good cause exists not to do so. Written inquiries to sources under Section 114(a)(1) do not require advance notice to the State.

#### Enforcement Procedures

It is the intent of this additional section to increase State/EPA cooperation and, as such, it must be fully complied with. However, as stated in Sec. 114(d) (2), failure by EPA to notify the State of any entry, inspection or monitoring will not prejudice any case involving information obtained during such an activity and will not constitute grounds for objection by the source.